

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12987 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BUDHABHAI NARANBHAI MAKWANA

Versus

GUJARAT VIDYAPITH

Appearance:

1. Special Civil Application No. 12987 of 1994
Ms DT SHAH for Petitioner
MR UDAYAN P VYAS for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/06/1999

ORAL JUDGEMENT

In this petition under Article 226 of the

Constitution the petitioner has challenged the judgement and order dated 10th October 1994 of Mr Girish Vyas, the then Gujarat Universities Services Tribunal ("the Tribunal" for short), constituted under the Gujarat Universities Services Tribunal Act, 1983, ("the Act" for short). The petitioner has also prayed for a writ of mandamus to direct the respondents to pay the petitioner the minimum time scale of sweeper and other allowances.

2. It is not necessary to refer to the facts leading to the filing of this petition, except that the petitioner had filed Application No.95 of 1993 before the Tribunal constituted under the Act with a prayer to direct the respondents to pay the petitioner the minimum time scale, house rent allowance and other allowances. The Tribunal rejected the said application only on the ground that the Tribunal had no jurisdiction to entertain the same.

3. Ms D.T. Shah, learned counsel for the petitioner has submitted that Gujarat Vidyapith is a deemed University as declared under Section 3 of the University Grants Commission Act, 1956 and, therefore, the Gujarat Vidyapith is covered by the definition of 'University' as contained in the second part of clause (f) of Section 2 of the Act.

4. On the other hand, Mr U.P. Vyas, learned counsel for Gujarat Vidyapith has vehemently opposed the petition and has supported the judgment of the Tribunal. According to Mr Vyas, the Tribunal rightly held that the second part of the definition includes an institution of higher education in the State but it has to be an institution other than a deemed University and, therefore, Gujarat Vidyapith, being a deemed University under Section 3 of the University Grants Commission Act is excluded from the definition.

5. Having heard the learned counsel for the parties, it appears to the Court that there is considerable force in the submission of the learned counsel for the petitioner. Section 8 of the Act states that where there is any dispute between the University and any University employee which is connected with the conditions of service of such employee, the University or University employee may make an application for the decision of the dispute. Clause (f) of Section 2 defines the expression "University" as under:-

"2.(f) 'University' means a University constituted under the relevant University Act and

includes any institution of higher education in the State other than a University, declared under section 3 of the University Grants Commission Act, 1956 to be deemed University for the purposes of the said Act."

There is no dispute about the fact that the Central Government issued notification bearing No.F/10/20/62-UGC, the relevant portion of which reads as under:-

"In exercise of the powers conferred by Sec.3 of the University Grants Commission Act, 1956 (3 of 1986), the Central Government on the advice of the Commission hereby declares that the Gujarat Vidyapeeth, Ahmedabad, which is an institution for higher education, shall be deemed to be a University for the purpose of the said Act."

6. The definition of University as per Section 2(f) of the Act, provides that two types of institutions are covered by the term 'University', namely - (i) A University constituted under the relevant University Act like Gujarat University under the Gujarat University Act, 1949, M.S. University under the M.S. University Act, 1950 so on and so forth, and (ii) An institution of higher education in the State of Gujarat (other than a University) declared under Section 3 of the University Grants Commission Act, 1956 to be a deemed University for the purposes of the said Act.

In other words, to fall within the scope of Section 2(f) of the Act, an institution of higher education must fall in either of the two categories enumerated above i.e. a University constituted under a statute or a deemed University u/s 3 of the UGC Act. Even a common sense reading of the definition in Section 2(f) of the Act along with a perusal of the said notification u/s 3 of the UGC Act would show that Gujarat Vidyapith is a University as defined u/s 2(f) of the Act.

7. Unfortunately, the Tribunal proceeded on an absolutely erroneous basis by holding that to fall within the scope of Section 2(f) of the Act, the institution must either be a University constituted under the relevant University Act or it should be an institution of higher education other than a deemed University. The Tribunal has gone to the extent of holding that the second part of the definition would include an institution of higher education in the State but it

excludes an institution declared to be a deemed University under Section 3 of the UGC Act. The question would then arise as to which institution of higher education in the State would be included in the second part of the definition. The Tribunal has gone on to hold that any institution of higher education in the State by fiction of law would be deemed to be a University if the Tribunal so feels, but an institution of higher education which is declared as a deemed University under Section 3 of the UGC Act cannot be considered by the Tribunal to be a University under the second part of the definition. The Tribunal, therefore, came to the strange conclusion that because Gujarat Vidyapith is declared to be a deemed University under Section 3 of the UGC Act, it stands excluded from the definition of University under Section 2(f) of the Act. The interpretation placed by the Tribunal defies language, logic and even common sense. The legislature was conscious of the fact that apart from the Universities constituted under specific Statutes there are other institutions of higher education in the State which are declared to be deemed Universities under Section 3 of the UGC Act. Even though such a declaration under Section 3 of the UGC Act is for the purposes of the said Act, the State legislature has consciously and advisedly adopted such a declaration as a second alternative definition of a University for the purposes of Gujarat Universities Services Tribunal Act, 1983. Hence, the judgment of the Tribunal is required to be set aside in view of the finding being given by this Court that Gujarat Vidyapith is a University within the meaning of Section 2(f) of the Act. In view of the above finding, it is not necessary to examine the second prayer on merits as the matter is being remanded to the Tribunal.

8. The petition is allowed. The judgment under challenge is set aside and it is held that Gujarat Vidyapith is a University within the meaning of Section 2(f) of the Gujarat Universities Services Tribunal Act, 1983. The Tribunal, therefore, has jurisdiction to entertain and decide the disputes between the Gujarat Vidyapith and employees of Gujarat Vidyapith. Accordingly, Application No.95 of 1993 shall stand revived and Tribunal shall hear and decide the same on merits as expeditiously as possible and preferably within 3 months from the date of receipt of writ of this Court or a certified copy of the judgement whichever is earlier.

9. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. SHAH, J.)

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